



Rail Service Competition Council

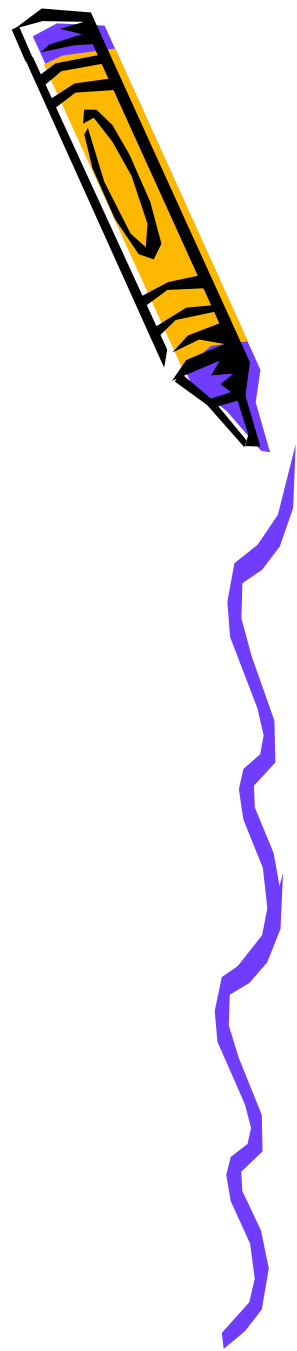
Whiteside & Associates
Billings, Montana

Presented at Shelby, MT - August 14, 2006

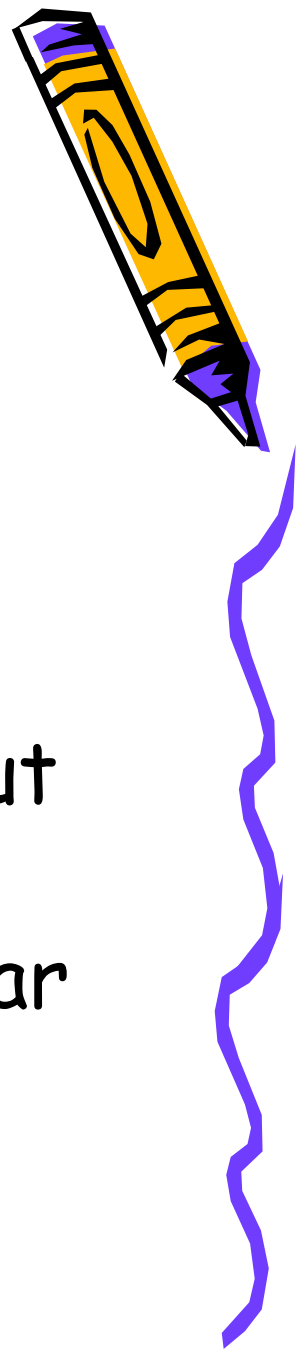


Proposed Survey of Shipper Issues in Central Montana

- Mike O'Hara
 - Outline of concept
 - Potential Action Item?



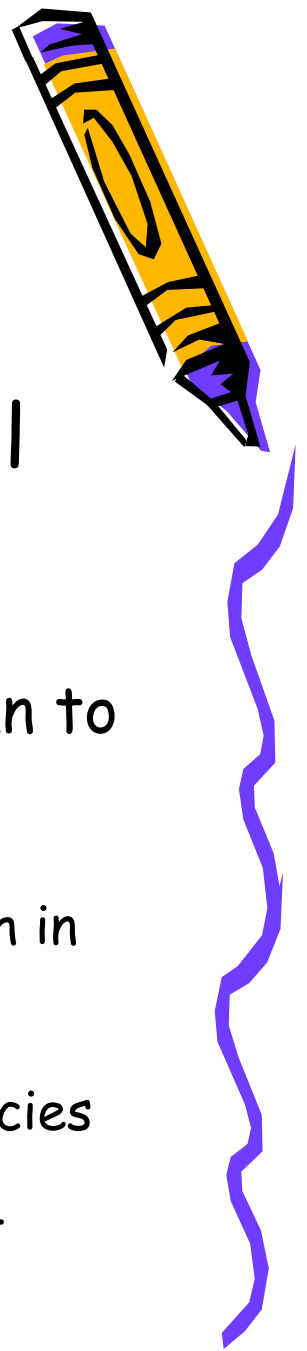
Outline of Talk on Development of Parameters for Development of Competition Criteria + Strategy



- Presented for Discussion Purposes and development of Consensus by RSCC
- Not designed to limit discussion but to promote discussion - if there is anything you want to add....let's hear it...



Parameters for Development for Competition Criteria



- Legislative Charge under House Bill No. 769
 - Promote Rail Service Competition in State
 - Develop comprehensive and coordinated plan to increase rail service competition in MT
 - Taxation, means to assist impacted shippers,
 - Feasibility of legal structure to facilitate growth in producer transportation investment coop & rural transportation infrastructure
 - Partnerships with other states and federal agencies to promote rail service competition
 - Provide advice and recommendations to MT DOT



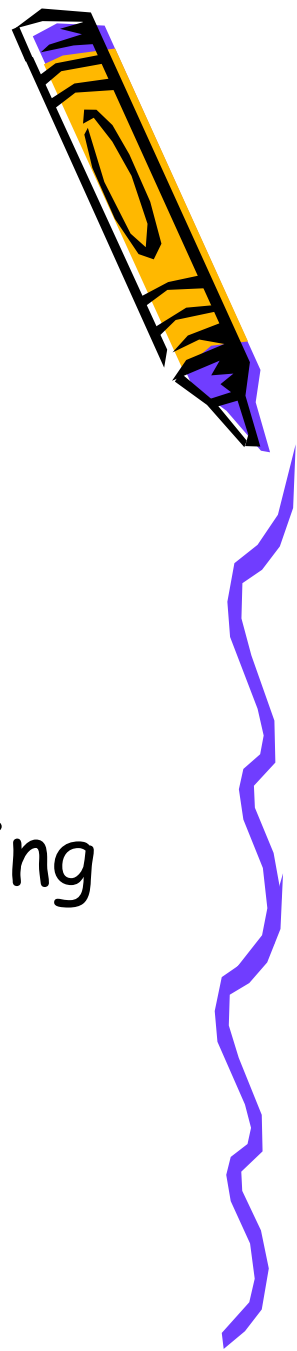
Parameters for Development for Competition Criteria (continued)



- Promote Rail Service Competition in State
 - How?
 - Work with MT Transportation providers to enhance options and choice
 - Build or encourage Rail-to-rail competition projects - build outs or build ins
 - Develop value added activities and projects which utilize product that traditionally moves over MT transportation system
 - Develop projects that provide for competitive uses of MT products off rail or on competitive railroad systems
 - Work with MT companies to enhance their ability to provide value added economic development



Parameters for Development for Competition Criteria (continued)



- NOTE: Working on or with rail projects and Montana economic development units may require development of more regional port authorities to work with the existing port authorities



Working With MT Transportation Providers To Enhance Options and Choice



- Montanans need increased options and improved throughput
 - Thus the goal of the RSCC may be to pursue joint projects with transportation providers that provide gain capacity and increase flexibility and choice in MT transportation system
 - Goal - provide a benefit to all MT industries
 - Do we need a Committee to develop lists of joint projects?



Parameters for Development for Competition Criteria (continued)



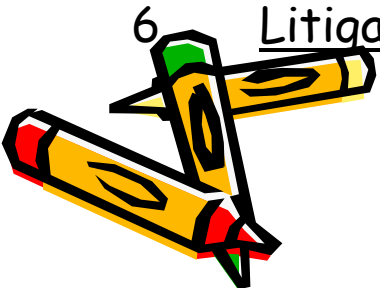
- Develop comprehensive and coordinated plan to increase rail service competition in MT
 - Taxation Issue - Re-evaluate State's Taxation practices
 - to ensure reasonable competition while minimizing any transfer of tax burden
 - **Do we need a Committee to work on this?**
 - Develop means of assisting Montanans impacted by high rates and poor service
 - This Competition Criteria should lay out the groundwork for developing 'means for assisting' - may involve government (state, local and federal), economic development units (local and state) + MT companies
 - Establishing and maintaining optimum transportation network



Six Future Strategies for Transportation in Montana



1. Explore and develop all rail or truck competitive options
2. Support all efforts at the local, state and federal level to increase choices in rail transportation
3. Support establishment of core rail branchlines and develop methods of financial and shipper support that will serve to minimize public expenditures
4. Develop lines of communication with all major transportation providers that serve Montana
5. Develop methodologies to lower transportation input costs in Montana
 1. Increase competition for use of MT products that move over MT transportation system
 2. Examine Tax rates on railroads and truck lines?
 3. Tort reform for settlements of lawsuits?
 4. Weight Limits?
 5. Demonstration projects for trucks
 6. Building transportation infrastructure that will lower transportation costs for MT producers and manufacturing
6. Litigate/participate on development of transportation issues
(transportation corridors, abandonments, ex parte, etc) when necessary



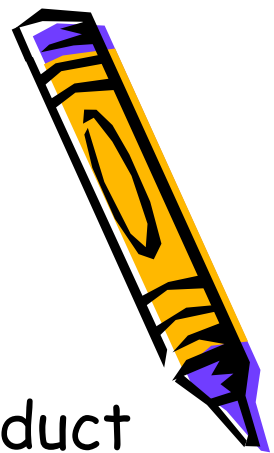
Strategies for Increasing Rail Service Competition



- Explore and develop all rail or truck competitive options
 - RSCC should explore feasibility of rail competitive alternatives - both with CP and UP
 - Project options include - build-in or build-out projects to competitive rail - looking for partners, companies, etc.
 - NE corner, Triangle Area, Flathead area, Butte-Silver Bow +
 - Note: will benefit entire state and all constituencies
 - RSCC should explore feasibility of projects that relocate MT products of the mine, lumber and agriculture to transportation competitive points
 - RSCC should evaluate degree of state, local and federal govt. involvement + industrial involvement in various projects
 - Truck competitive options - demonstration projects on certain routes for heavier loads (doing this in ID) to lower transportation costs
 - Developing trucking reciprocity with AB and SK govt.?
 - Others? Standardized weights and measure?



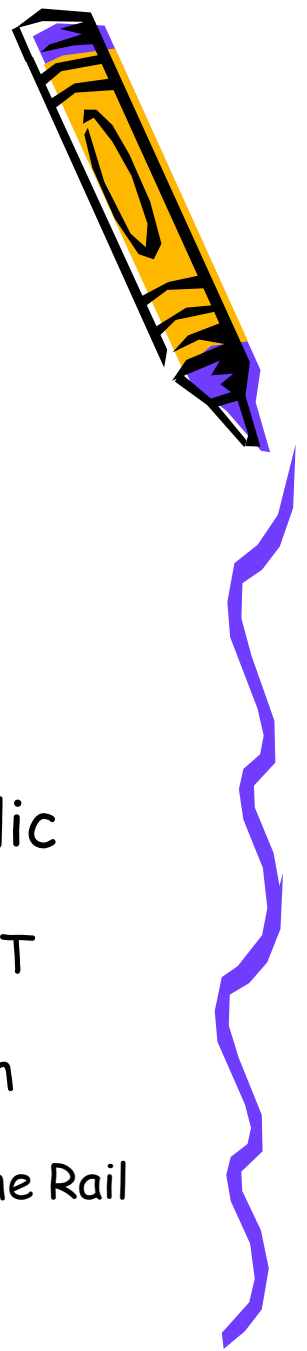
Develop value added activities and projects which utilize product that traditionally moves over MT transportation system



- Any value added industry that utilizes MT product that traditionally moves via our transportation system has the potential of increasing the value to producers of that product
- Plan should include examination of ways to enhance local and state economic development of value added industries that will serve to increase competition for MT products of the mine, lumber and agriculture
- Plan should also develop representative projects that meet criteria



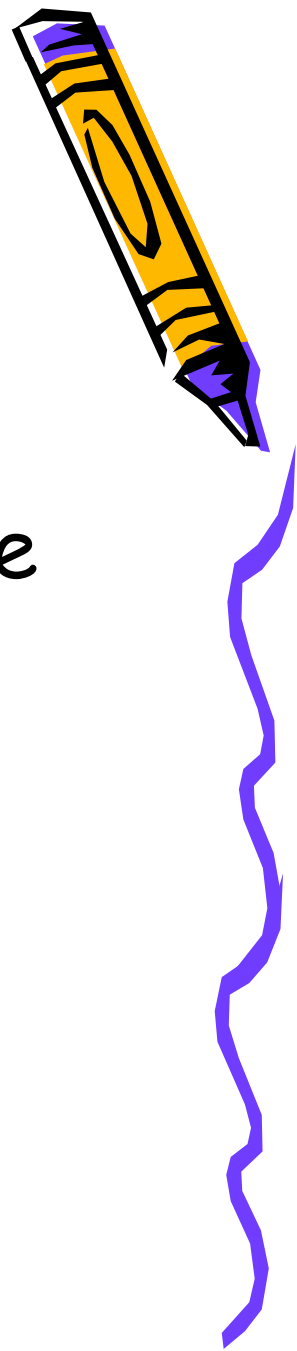
Support establishment of core rail branchlines



- Development of CORE MT rail system
 - Should include Branch, feeder and main lines
 - Minimum necessary for MT industry
- Methodologies developed to provide financial support for CORE system
- FACT: when a rail line is lost - the economic burden is shifted from the private to the public sector
 - Many cases - the economic burden is forced upon MT secondary highway system
 - What is the total cost private and public - long term associated with the loss of rail infrastructure
 - RSCC plan should include active participation in the Rail Infrastructure bill now moving in Congress



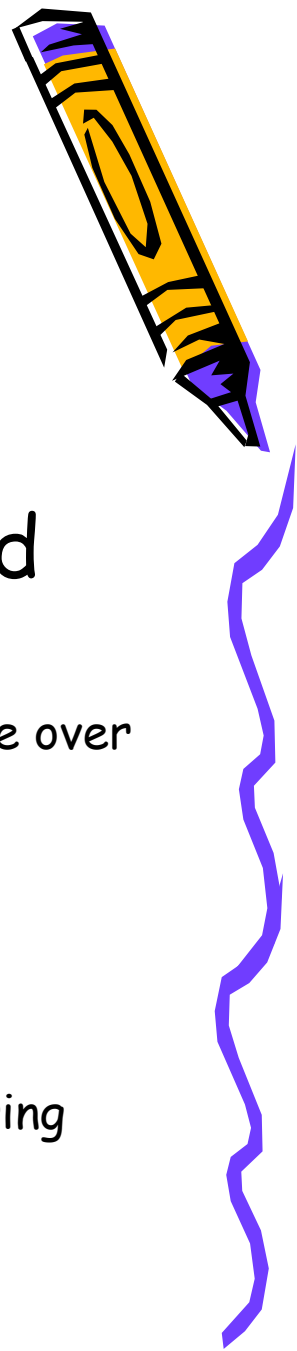
Develop lines of communication with Transportation Providers



- As Montana seeks to improve transportation choices and enhance transportation opportunities, it becomes vitally important to understand each transportation providers interests and concerns



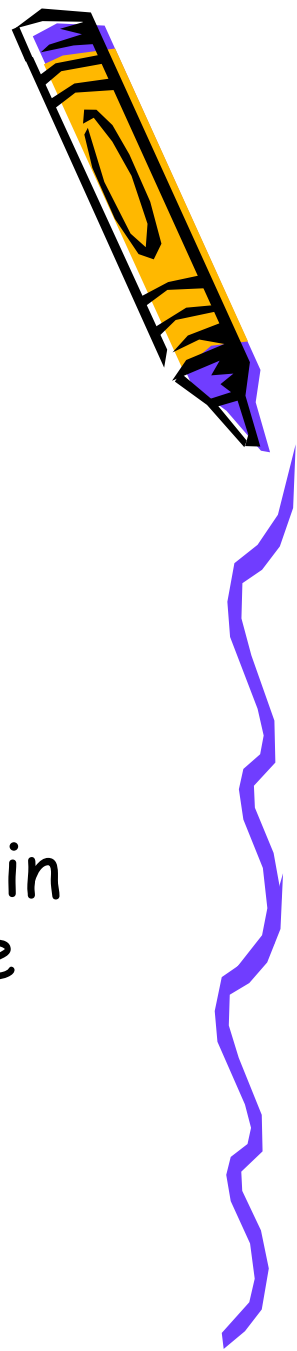
Develop methodologies to lower transportation input costs



- RSCC plan should assess and evaluate methodologies that could lower transportation costs in MT
 1. Increase competition for use of MT products that move over MT transportation system
 2. Examine Tax rates on railroads and truck lines?
 3. Tort reform for settlements of lawsuits?
 4. Weight Limits?
 5. Demonstration projects for trucks
 6. Building transportation infrastructure that will lower transportation costs for MT producers and manufacturing



**Litigate/participate on development of
transportation issues (transportation
corridors, abandonments, ex parte, etc)
when necessary**



- There are times when being capable of pursuing matters to settlement may include embracing litigation
- Many industries and agriculture do this routinely
- Not proposing substitution for efforts in private sector by government but there may be areas where particular State interests need representation as described above



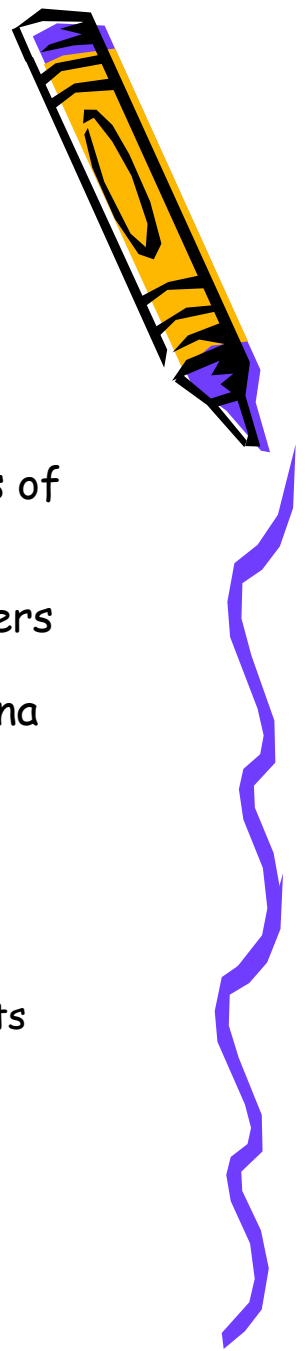
Parameters Review



- Legislative Charge under House Bill No. 769
 - Promote Rail Service Competition in State
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- Working With MT Transportation Providers To Enhance Options and Choice
- Develop comprehensive and coordinated plan to increase rail service competition in MT
 - Taxation Issue
 - Develop means of assisting Montanans impacted by high rates and poor service - combination private/public involvement



Review-Six Future Strategies for Transportation in Montana



1. Explore and develop all rail or truck competitive options - project focus
2. Support all efforts at the local, state and federal level to increase choices in rail transportation
3. Support establishment of core rail branchlines and develop methods of financial and shipper support that will serve to minimize public expenditures
4. Develop lines of communication with all major transportation providers that serve Montana
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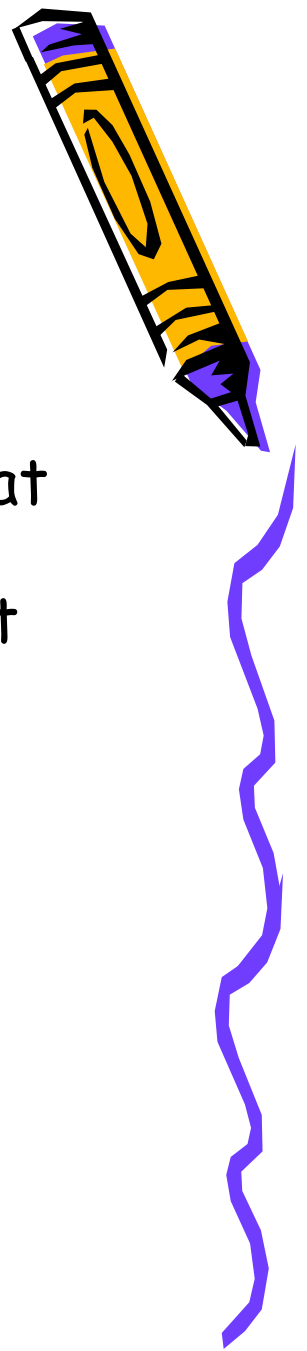
Simplified Standards for Rail Rate Cases



- Shipper Position on Small Case Procedures
- Simplicity is crucial
- Clarity and predictability are important
- Expeditious action is most important
- A “bright-line test” for eligibility, based on the annual freight bill (\$7.2 million) between a single O-D pair



Summary of Board's Proposal



- "Simplicity" - proposed a new standard ("Simplified Stand-Alone Cost" or "SSAC") that will apply to the majority of non-coal cases
- "Expedition" - New SSAC standard will take at least 18 months to litigate
- "Clarity" and "predictability" - significant uncertainty as to method, cost and results of SSAC
- STB has under-estimated cost of SSAC
- Bright-Line eligibility threshold is well below shipper recommendations



Proposed Changes to Regulatory Rate Standards



• Current Standards

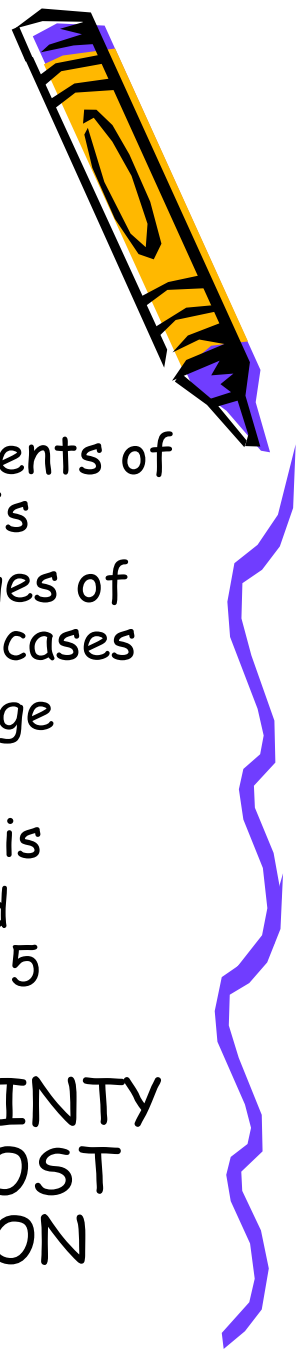
- Stand-Alone Cost (large cases) - "build" a hypothetical railroad"
- Three-Factor Benchmark (small rate case)
 - "Revenue adequacy" benchmark--published by STB
 - "Fairness" benchmark -- published by STB
 - "Rate comparison" benchmark - calculated and litigated
 - Other possible factors

• Proposed Standards

- Stand-Alone Cost ("SAC")
 - current standard, now proposed for "large" cases
- "Simplified Stand-Alone Cost" ("SSAC") - new standard proposed for "medium" cases
- Three-Factor Benchmark
 - revised and proposed for only very small cases



Overview of Proposed Standards



- Small Rate Case
 - Keep three benchmark approach
 - Revise calculation of two of the benchmarks
 - Select comparable traffic group through "baseball" style arbitration
 - Provides some guidance on how maximum rate will be determined (formula)
 - 5-year remedy
- Simplified SAC
 - Standardize elements of a Full-SAC analysis
 - Use rolling averages of most recent SAC cases
 - Use system average URCS costing
 - 1-year DCF analysis
 - Re-apply standard annually for up to 5 years.
- MUCH UNCERTAINTY IN MEANING, COST AND APPLICATION



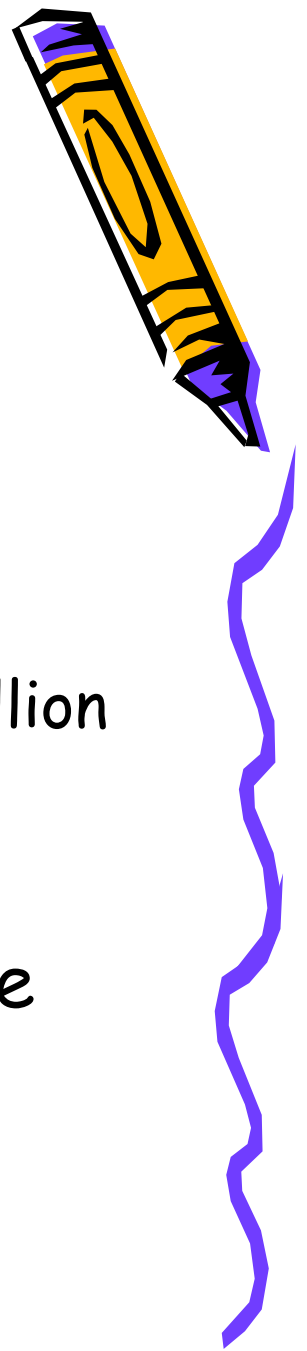
Eligibility: "Maximum Value of Case"



- Eligibility to use a rate standard based on "Maximum Value of Case"
- "Maximum Value" is measured as:
 - Difference between challenged rate and 180% R/VC of movement
 - Multiplied by expected annual carloads
 - Multiplied by 5 years
 - Discounted by Railroads' Annual Cost of Capital
- Multiple Origin-Destination pairs must be aggregated to calculate "maximum value"



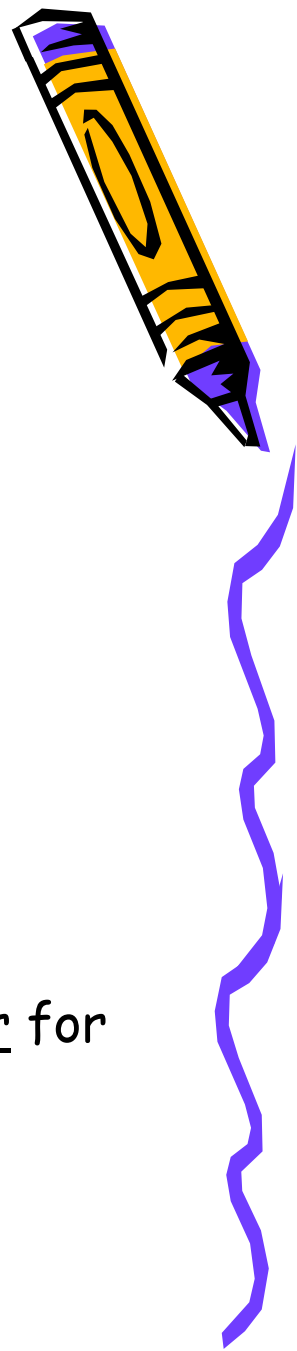
Proposed Eligibility Thresholds



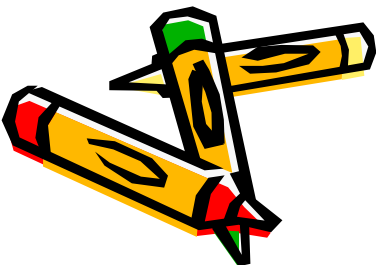
- Stand-Alone Cost
 - "Maximum Value" > \$3.5 million
- Simplified SAC
 - "Maximum Value" > \$200,000 and < \$3.5 million
- Revised Three-Factor Benchmark Case
 - "Maximum Value" < \$200,000
- A shipper outside a threshold may argue for inclusion on its specific facts



Estimated Cost to Litigate



- Full SAC:
 - STB estimate: \$3.5 million
 - Realistic cost: \$5 million or more
- Simplified SAC
 - STB estimate: \$200,000
 - Realistic cost: Uncertain, but probably much higher.
- Three Factor Benchmark
 - STB: no estimate
 - Realistic cost: Perhaps \$200,000 or less, but higher for first few cases



Proposed Time Frames

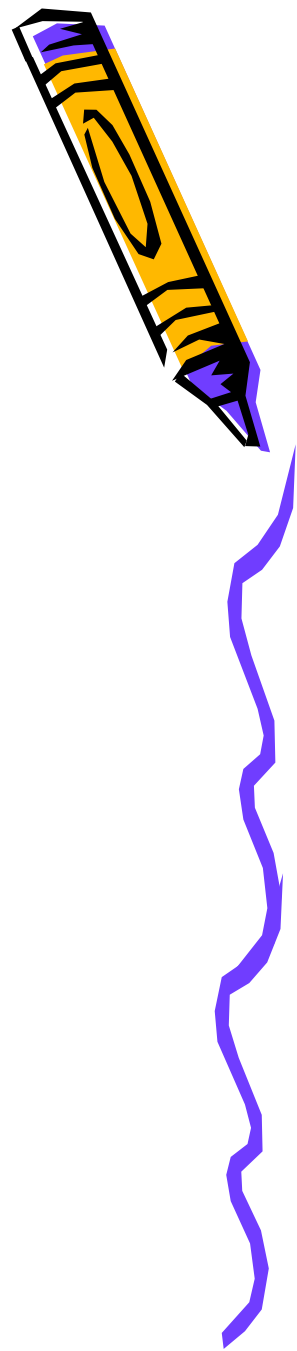


- Revised Three-Factor Benchmark Case
 - 3 phases
 - Eligibility
 - Discovery
 - Merits
 - 180 days plus
 - 3 months for decision
 - STB Schedule: Total time for decision: 9 months
- Simplified SAC Case
 - 3 phases
 - Eligibility
 - Discovery and Route selection
 - Merits
 - 360 days plus
 - 6 months for decision
 - STB Schedule: Total time for decision: year and a half
- STB estimate on time for litigation is very likely understated



Rulemaking Schedule

- Sept. 1: Notify STB of intent to participate
- Sept. 29: File opening comments
- Oct. 30: File reply comments
- Dec. 1: File rebuttal comments



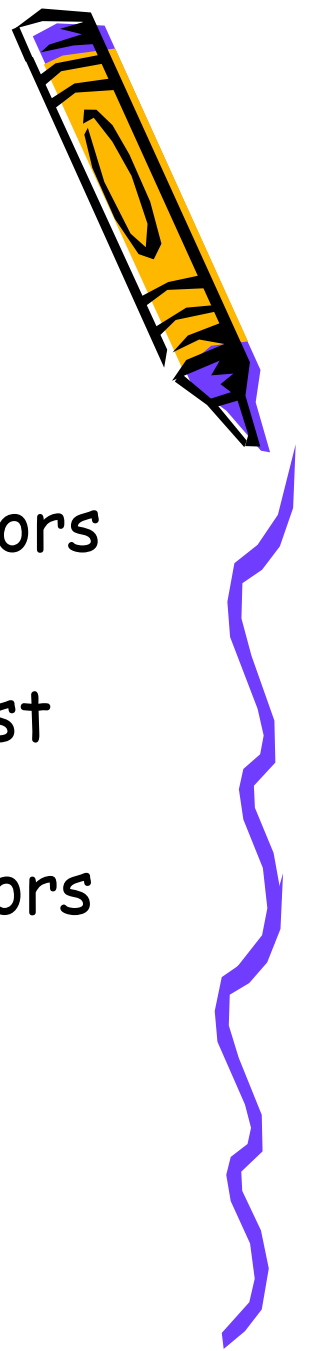
Rail Fuel Surcharges



- The proposed changes would force railroads to tie surcharges more closely to actual changes in fuel costs.
- Railroads also would be required to file monthly reports disclosing fuel costs, fuel consumption and revenue from surcharges.
- The STB also called for abandoning the widely used method of setting fuel surcharges as a percentage of base shipping rates, which vary depending on the level of competition. Instead, the agency proposed requiring railroads to devise an alternative method, such as mileage or combination of weight and mileage.



Update on Federal Legislation



- S919 - Rail Competition - 10 Cosponsors
- HR 2047 - Rail Competition - 36 Cosponsors
- HR 3318 - Rail Antitrust - 7 Cosponsors
- S 3612 - Rail Antitrust - 1 Cosponsor (just introduced)
- S3742 - Rail Infrastructure - 9 Cosponsors

